

First City National Bank of Houston

P.O. Box 2557
Houston, TX 77252
(713) 658-6011

Date 10/4/85
Fee \$ 10.00

FIRSTCITY

CC Washington, D.C.

October 1, 1985

11488-A
RECORDED NO. 11488 PAGE 103

Mr. Louis E. Gitomer, Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 5417
Washington, D.C. 20423

OCT 4 1985 -2 05 PM

INTERSTATE COMMERCE COMMISSION

ATTENTION: Railroad Documentation

Dear Secretary:

I have enclosed an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a First Amendment to Security Agreement and Mortgage, a secondary document dated September 26, 1985.

The primary documents to which this is connected are recorded under Recordation Nos. 11488, 11582, 11669, 11719 and 11794.

Cross Index 7 7

The names and addresses of the parties to the documents are as follows:

Mortgagor (Debtor): Western Railroad Company
5303 Navigation
Houston, Texas 77011

Mortgagee (Secured Party): First City National Bank
of Houston
1001 Main Street
Houston, Texas 77002
Attention: Ms. Beverly Z. Baker,
Vice President

Guarantors: William R. Parker, Jr.
D. R. Parker
B. K. Parker, Jr.
R. H. Parker, Jr.

Interstate Commerce Commission
October 1, 1985
Page 2

A general description of the equipment covered by the document is as follows:

Two hundred forty-eight (248) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following identifying marks and car numbers:

WRRC 474 through WRRC 723 both inclusive with the exception of WRRC 517 and WRRC 617.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to Mr. Mark Dobbins, First City National Bank of Houston, First City Tower, 2nd Floor, Houston, Texas 77002.

A short summary of the document to appear in the index is as follows:

First Amendment to Security Agreement and Mortgage to Security Agreement and Mortgages with Recordation Nos. 11488, 11582, 11669, 11719 and 11794, dated September 26, 1985 covering two hundred forty-eight (248) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet.

Very truly yours,

FIRST CITY NATIONAL BANK
OF HOUSTON

Beverly Z. Baker
Beverly Z. Baker
Vice-President

636:2409
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

10/4/85

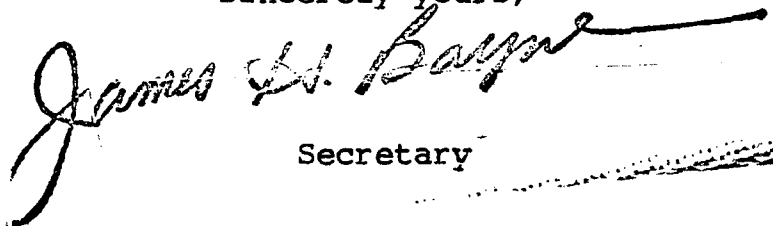
OFFICE OF THE SECRETARY

Beverly Z Baker
Vice President
First City National Bank Of Houston
P.O.Box 2557
Houston, Texas 77252

Dear Ms. Baker:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/4/85 at 2:05pm and assigned recordation number(s). 11488-A

Sincerely yours,


Secretary

Enclosure(s)

RECORDED AS 11488-A
OCT 4 1985 - 2 05 PM
INTERSTATE COMMERCE COMMISSION

FIRST AMENDMENT TO SECURITY AGREEMENT & MORTGAGE

THIS FIRST AMENDMENT TO SECURITY AGREEMENT (this "First Amendment") entered into as of the 26th day of September, 1985 to be effective as of December 30, 1984, by WESTERN RAIL ROAD COMPANY, a Texas corporation, with its chief executive office and chief place of business located at 5303 Navigation, Houston, Harris County, Texas 77011 ("Debtor"), in favor of FIRST CITY NATIONAL BANK OF HOUSTON, a national banking association with banking quarters at 1001 Main Street, Houston, Texas 77002 ("Secured Party");

W I T N E S S E T H:

WHEREAS, on January 8, 1980, Secured Party and Debtor entered into a loan agreement (the "1980 Agreement") pursuant to which Secured Party agreed to make loans to Debtor up to the amount of \$10,000,000.00 (the "Loan") for the purpose of purchasing two hundred fifty 100 ton Rapid Discharge Bottom Dump railroad cars each having an approximate 2300 cubic foot capacity and an overall approximate length of forty-four feet (the "Cars"); and

WHEREAS, as security for the Loan, Debtor executed and delivered to Secured Party a Security Agreement and Mortgage prior to each advance granting the Secured Party a security interest and mortgage on those Cars which were being purchased with such advance, there being a total of five Security Agreement and Mortgages (collectively the "Security Agreement"), covering in the aggregate the collateral listed on Exhibit "A" attached hereto; and

WHEREAS, on even date herewith, Debtor and Secured Party are entering into that certain First Amendment to Loan Agreement (the 1980 Agreement as amended by the First Amendment to Loan Agreement being hereinafter referred to as the "Loan Agreement") pursuant to which the Secured Party agreed to renew, rearrange and extend Debtor's obligations under the Loan (the "Renewal"); and

WHEREAS, in connection with the Renewal, Debtor and Secured Party desire to amend certain terms and conditions of the Security Agreement;

NOW, THEREFORE, Debtor and Secured Party hereby agree as follows:

1. The terms "this Security Agreement," "herein," "hereof," "hereunder" and terms of like import when used in the Security Agreement shall from and after the date hereof refer to the Security Agreement, as amended by this First Amendment.

2. Paragraph 2 of the Security Agreement is hereby deleted in its entirety and the following is substituted therefore:

This security interest and general lien and mortgage is granted to Secured Party to secure the prompt and unconditional payment of all obligations and liabilities of the undersigned to Secured Party (including all claims of every nature and description of Secured Party against the undersigned) now or hereafter existing or arising, absolute or

contingent, direct or indirect, secured or unsecured, due or to become due, whether originally contracted with Secured Party or acquired in any manner (including by way of participation) by Secured Party, including, without limitation, that certain promissory note dated as of December 30, 1984 in the principal amount of \$4,519,931.51 executed by Debtor and payable to the order of Secured Party in sixty (60) monthly installments (the "Note"), which Note represents a renewal, rearrangement and extension of the outstanding balance on that certain \$10,000,000.00 promissory note dated as of January 8, 1980 executed by Debtor and payable to the order of Secured Party, and all renewals, rearrangements, modifications and extensions of the Note (all of which is hereinafter called the "Indebtedness").

3. Debtor hereby grants and/or confirms that it has heretofore granted to Secured Party a security interest in, a general lien upon and a right of set-off against the Collateral and Debtor further confirms that all such Collateral shall secure the payment and performance of the Indebtedness.

4. Except as amended by this First Amendment, the Security Agreement shall remain in full force and effect. None of the rights, titles and interests existing and to exist under the Security Agreement are hereby released, diminished or impaired, and Debtor hereby reaffirms all covenants, representations and warranties made in the Security Agreement.

5. Unless otherwise defined herein, all terms beginning with a capital letter which are defined in the Security Agreement shall have the same meaning herein as therein, unless the context otherwise requires.

WITNESS THE EXECUTION HEREOF as of the date first above written.

DEBTOR:

WESTERN RAIL ROAD COMPANY

By: 

Name: JOHN MILLS

Title: VICE-PRESIDENT

SECURED PARTY:

FIRST CITY NATIONAL BANK OF HOUSTON

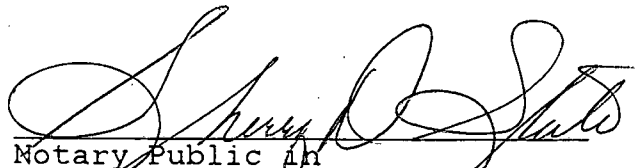
By: 

Name: Beverly Z Baker

Title: Vice President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on September 26, 1985 by John Mills, Vice President of Western Rail Road Company, a Texas corporation, on behalf of such corporation.


Notary Public in
Harris County, TEXAS

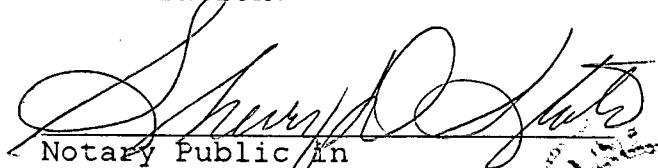
My Commission Expires:

SHERRY D. SLATE

My Commission Expires: 12-3-85

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

THIS INSTRUMENT was acknowledged before me on September 26, 1985 by Beverly Z. Baker, Vice President of First City National Bank of Houston, a national banking association, on behalf of such association.


Notary Public in
Harris County, TEXAS

My Commission Expires:

SHERRY D. SLATE

My Commission Expires: 12-3-85

EXHIBIT "A"

Sally
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- (i) ~~Fifty~~ ^{Forty-Nine 49} (~~80~~) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following identifying marks and car numbers:
- WRRC 474 thru WRRC 523, Both Inclusive
With the exception of WRRC 517
- (ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and
- (iii) All equipment, inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the Collateral.

EXHIBIT "A"

- (i) Fifty (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following indentifying marks and car numbers:

WRRRC 524 thru WRRRC 573, both inclusive

- (ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted on August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio, 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and
- (iii) All equipment inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the Collateral.

EXHIBIT "A"

- Sum*
B2B
- (i) ^{Forty-Nine 49}
~~Fifty~~ (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following indentifying marks and car numbers:

WRRC 574 thru WRRC 620 and WRRC 622 thru WRRC 624, inclusive
With the exception of WRRC 617

- (ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted on August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio, 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and
- (iii) All equipment inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the Collateral.

EXHIBIT "A"

- (i) Fifty (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following identifying marks and car numbers:

WRRC 621; WRRC 625 thru WRRC 673, inclusive.

- (ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and
- (iii) All equipment, inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the Collateral.

EXHIBIT "A"

- (i) Fifty (50) 100 ton Rapid Discharge Aggregate Bottom Dump railroad cars, approximate 2300 cubic foot capacity, approximate overall length 44 feet, with the following indentifying marks and car numbers:

WRRRC 674 thru WRRRC 723, inclusive

- (ii) All rights of Debtor under that certain purchase order letter agreement dated August 3, 1978 and accepted on August 25, 1978 by and between Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio, 45208, as manufacturer, and Western Rail Road Company, as purchaser, pertaining to the above-described railroad cars; and
- (iii) All equipment inventory, general intangibles, accounts, chattel paper, accessions, substitutions, proceeds and products used in connection with or arising out of any of the foregoing. The term "proceeds" shall have the same meaning as used in Chapter Nine of the Uniform Commercial Code as now adopted in the State of Texas and shall include (without limitation) all accounts, general intangibles, instruments, documents, monies, insurance, chattel paper, income, and other property, benefits or rights of whatever kind or nature arising from, attributable to or accruing from any and all sales, leases or other dispositions of any or all of the Collateral.